IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(*Special Original Jurisdiction*)

Date 30-6-2006

P R E S E N T

THE HON'BLE SRI JUSTICE P.S. NARAYANA

* * *

WP.No.9884 of 2006

Between:

Dara Lavanya … Petitioner

Versus

Chilkua Ambavva & Ors. … Respondents

Counsel for the Petitioner: Sri D.Jagan Mohan Reddy

Counsel for the Respondents: Sri P.RadhaKrishna (SC for MPL)

Sri V.Ravi Kiran Rao

O R D E R :

The writ petitioner aggrieved by an order dated 29-4-2006 in the Election OP.No.23 of 2006 on the file of the Court of Senior Civil Judge, Sircilla, Karimnagar district, (Election Tribunal), had filed the present writ petition praying for a writ of certiorari calling for the records and quash the same.

In the aforesaid OP the evidence of PW.1, RWs 1 to 5 was recorded by the learned Senior Civil Judge-Election Tribunal, Sircilla and Exs.P1 to P6 and Ex.R1 were marked. On appreciation of evidence available on record, the learned Judge came to a conclusion that the petitioner incurs disqualification under section 13-B of the AP Municipalities Act, 1965 (hereinafter referred to as 'the Act' for the purpose of convenience) and accordingly allowed the OP. Aggrieved by the same, the present writ petition is filed.

Sri Jagan Mohan Reddy, the learned counsel representing the petitioner had taken this court through the grounds raised and also would submit that as far as the disqualification relating to having more than two children is concerned, the ground of

adoption raised no longer survives in the light of the pronouncement of the Apex Court in **JAVED AND OTHERS Vs. STATE OF HARYANA AND OTHERS**[1]. However, the learned counsel had drawn the attention of this court to Rule 10 of the A.P.Municipalities (Decision of Election Disputes) Rules, 1967 (hereinafter referred to as " the Rules " for the purpose of convenience) and would contend that setting aside the Election of such disqualification is not a ground under the said rule. The learned counsel would also submit that section 326 of the Act deals with the rule making power. Under section 17 of the Act separate procedure is contemplated and hence this disqualification cannot be dealt with by the concerned Election Tribunal. The procedure followed is something different. The learned counsel would submit that the question of jurisdiction was not raised before the learned Senior Civil Judge, Election Tribunal. But however this being a question of law it would neither operate as ***resjudicata*** nor ***estoppel*** and hence the same is being raised as a ground before this court.

Per contra, Sri V.Ravikiran Rao representing the first

respondent would maintain that as far as jurisdiction of the Election Tribunal to decide this disqualification is concerned, there cannot be any controversy in the light of the relevant provision of section 13 (6) of the Act read with Rule 10 of the Rules and any other alternative interpretation may result in absurdity. The learned counsel would also submit that under section 17 of the Act the District Court is not empowered to set aside the Election and hence the only provision available is Rule 10 under the Rules framed by virtue of the exercise of power under section 326 of the Act.

Sri Polisetti Radhakrishna, the learned counsel however would contend that under section 13-B of the Act read with section 17 of the Act and also Rule 10 of the Rules inasmuch as this is a clear disqualification the impugned order does not suffer from any irregularity or illegality. The learned counsel would maintain the aspect of want of jurisdiction is being raised before this court for the first time.

Heard the learned counsel on record and perused the impugned order.

As already stated supra, the learned Judge recorded the evidence of PW.1 and RWs. 1 to 5 marked under Ex.P1 to P6 and Ex.R1 and recorded the findings in detail and came to the conclusion that the adoption pleaded is not true and genuine and hence the writ petitioner is disqualified to contest the election in view of section 13-B of the Act and accordingly the election of the writ petitioner as ward member of the Municipal Council of Sircilla was set aside.

At the outset it may be stated that in **JAVED AND OTHERS Vs. STATE OF HARYANA AND OTHERS** referred supra-1, while dealing with Haryana Panchayati Raj Act, 1994 relating to disqualification observed at para 62 as hereunder:

> *It was submitted that the Enactment has created serious problems in the rural population as couples desirous of contesting an election but having living children more than two, are feeling compelled to give them in adoption. Subject to what has already been stated hereinabove, we may add that disqualification is attracted no sooner a third child is born and is living after two living children. Merely because the couple has parted with one child by giving the child away in adoption, the disqualification does not come to an end. While interpreting the scope of disqualification we shall have to keep in view the evil sought to be cured and purpose sought to be achieved by the enactment. If the person*

sought to be disqualified is responsible for or has given birth to children more than two who are living then merely because one or more of them are given in adoption the disqualification is not wiped out.

In all fairness the counsel representing the petitioner had not seriously canvassed this question. It is stated that the Election notification was issued on 31-8-2005 for the purpose of conducting election for Sircilla Municipality. It is also stated that the petitioner and also respondents 1 to 9 have filed their respective nominations for contesting the election for ward no.20 of Municipal Council, Sircilla, Karimnagar district. The nominations were received from 02-9-2005 to 05-9-2005 and the nominations were scrutinized on 06-9-2005. It was further stated that all the nominations were processed and a final list was published showing respondents 1 to 9 along with writ petitioner as contesting candidates. It is stated that at the stage of scrutiny of nominations, no objections had been raised and the nomination in fact was accepted. It was further stated that the Elections were held on 24-9-2005 and the counting of votes had taken place on 26-9-2005 and the petitioner was declared as elected as councilor of ward no.21 Sircilla Municipality, Karimnagar district.

It is stated that the first respondent filed election OP.No.23 of 2005 on the file of Senior Civil Judge-Election Tribunal, Sircilla, praying for the relief of declaration that the election of the petitioner is void and to pass an order to declare fresh election for the post of ward member (councillor) of ward no.21 of Sircilla Municipality, Karimnagar district. It is stated that the main ground for declaring the election of the petitioner as void and that the petitioner was disqualified for contesting the election, as she had given birth to a third child after the AP Municipalities second amendment came into force and by the date of election she had three children, and as such, she incurs disqualification from contesting the election in view of section 13-B of the Act. No doubt other factual details had been narrated and certain details relating to the evidence had been pointed out in the affidavit filed in support of the writ petition.

Section 13-A of the Act dealing with general disqualification reads as hereunder :

> "*A person shall be disqualified for being chosen as, or for being a member of a Municipality if he is disqualified by or under any law for the time being in force for the purpose of elections to the legislature of the State concerned.*
>
> *Provided that no person shall be disqualified on the ground that he is less than twenty five years of age, if he*

has attained the age of twenty one years."

Likewise, Section 13-B of the Act dealing with, persons having more than two children to be disqualified, reads as hereunder :

A person having more than two children shall disqualified for

election or for continuing as member:

Provided that the birth within one year from the date of commencement of the AP Municipal Laws (second amendment) Act, 1994 (hereinafter in this section referred to as the date of such commencement) of an additional child shall not be taken into consideration for the purpose of this section.

Provided further that a person having more than two children (including the child if any born within one year from the date of such commencement) shall not be disqualified under this section for so long as the number of children he had on the date of such commencement does not increase.

Provided also that the Government may direct that the disqualification in this section shall not apply in respect of person for reasons to be recorded in writing.

Section 17 of the Act dealing with District Judge to decide the questions of disqualifications of members, reads as under:

(1) Where an allegation is made by any voter or authority to the (Commissioner) in writing that any person who is elected as a member has not qualified or has become disqualified under section 13, section 13-A, Section 13-B, Section 14, Section 16 or Section 19

and the Commissioner has given intimation of such allegation to the member and such member disputes the correctness of the allegation so made or where any member himself entertains any doubt whether or not he has become disqualified under any of those sections.

(a) such member or any member may, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be; and

(b) the Commissioner shall, either on the direction of the council or with the approval of the Government if no such direction is given within a period of two months from the date of placing of the matter by the Commissioner before the council, apply for a decision to the District Judge of the District in which the municipality is situated.

(2) The said Judge, after making such inquiry as he deems necessary, shall determine whether or not such person disqualified and his decision shall be final.

(3) Pending such decision, the member shall be entitled to act, as if he was not disqualified.

Section 326 of the Act deals with Power of Government to make rules.

Rule 10 of the Rules specifies certain grounds and Rule 10 of the A.P.Municipalities (Decision of Election Disputes) Rules 1967 reads as hereunder:

Rule 10: If in the opinion of the Election Tribunal –

(a) a returned candidate, his agent or any other person with the connivance of such candidate or agent, has committed or abated the commission of any election offence falling under section 18 of the Act or under Chapter-IX-A, of the Indian Penal Code, or

(b) the election of a returned candidate has been procured or induced or the result of the election has been materially affected by any of the following corrupt practices:-

(i) any election offence falling under section 18, of the Act or under Chapter-IX-A of the Indian Penal Code when committed by a person, who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent;

(ii) any payment or promise of payment to any person whomsoever on account of the conveyance of any elector to or from any place for the purpose of recording his vote;

(iii) The hiring, employment, borrowing or using for the purposes of the election of any boat, vehicle or animal usually kept for letting on hire or for the conveyance or passengers by hire'

Provided that any elector may hire any boat, vehicle of animal of use any boat, vehicle or animal which is his own property to convey himself to/or from the place where the vote is recorded; and

(iv) the hiring, using or letting, as a committee-room or for the purpose of any meeting to which electors are admitted of any building, room or other place where intoxicating liquor is sold to the public; or

(c) the result of the election has been materially affected by any irregularity in respect of a nomination paper or by the improper reception or refusal of a nomination paper or vote or by any non-compliance with the provisions of the Act or the Rules made thereunder.

The election of such returned candidate shall be void;

Provided that, if the Election Tribunal is of opinion that, any corrupt practice specified in clause (b) of this rule, which does not amount to any form of bribery other than treating as hereinafter explained has been committed and if the Election Tribunal is further of opinion that the candidate has satisfied him, that;

(a) no corrupt practice was committed at such election by the candidate and that any corrupt practices committed contrary to the orders and without the sanction or connivance of such candidate;

(b) such candidate took all reasonable means for preventing the commission of corrupt practices at such election;

(c) the corrupt pratices committed were of trivial, unimportant and limited character, and

(d) in all other respects the election was free from any corrupt practice on the part of such candidate or any of his agents, then the Election Tribunal may find that the election of such candidate is not void.

***Explanation**:- For the purpose of this rule 'treating' means the incurring in whole or in part by any person of the expense of giving or providing any food, drink entertainment or provision to any person with the object, directly or indirectly, of inducing him or any other person to vote to refrain from voting or as a reward for having voted or refrained from voting.*

It is no doubt true that as submitted by the counsel representing the writ petitioner the ground of disqualification is not specifically specified as a ground under Rule 10 of the Rules. On the strength of the same, it is contended that the procedure to be

adopted is as contemplated under section 17 of the Act. The counsel also would maintain that in-as-much-as specific statutory provision is available and the procedure had been specified under the rule such disqualification cannot be taken into consideration and the election cannot be set aside on such a ground. In substance the stand taken by the learned counsel for the writ petitioner is that strict interpretation to be given to the relevant provisions of the statutes and the rules. In the event of any doubt, it is for the Legislature to amend the statutory provisions and also if necessary subordinate legislation governing the field and it is not for the courts to fill up such gaps.

On a careful reading of the provisions relating to the disqualification under section 13-B and also section 17 of the Act though the procedure had been specified under section 17 of the Act, the District Judge is not empowered to set aside the election and the only competent authority is the Election Tribunal (Senior Civil Judge) as specified under Rule 10. While interpreting the statutory provisions and also the relevant rules framed thereunder the whole scheme of the Act to be carefully examined and also the object of constituting Election Tribunals to be taken into

consideration. It is pertinent to note that when the candidate incurs disqualification that too a statutory disqualification merely because the nominations were accepted at a particular stage and merely because that ground is not specified or incorporated in the rules by the rule making authority that cannot be taken as a ground to contend that the provisions are to be interpreted that the Election Tribunal has no authority or jurisdiction to interfere in such a matter. Hence, this court is well satisfied that in the light of the reasons in detail, which had been recorded by the learned Judge, this court is of the considered opinion that there is absolutely no illegality in the impugned order and accordingly the writ petition shall stand dismissed. No costs.

30-6-2006. ----------

I s L. P . S . NARAYANA , J.

N o t e :

L.R. Copy marked.

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[1]) **(2003) 8 Supreme Court Cases-369**